

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M WAIKIKI LLC,

Plaintiff,

- against -

MARRIOTT HOTEL SERVICES, INC., I.S.
INTERNATIONAL, LLC, AND IAN SCHRAGER,

Defendants.

No. 11 Civ. 06488 (BSJ)(MHD)

(Removed from the Supreme Court
for the State of New York, County of
New York Index No. 651457/2011)

MARRIOTT HOTEL SERVICES, INC.,

Counterclaim Plaintiff,

- against -

M WAIKIKI LLC,

Counterclaim Defendant.

DECLARATION OF MITCHELL C. HOCHBERG

I, Mitchell C. Hochberg, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am the Principal of Madden Real Estate Ventures (“Madden”) and have more than 30 years of experience in the real estate development and operations for residential, hospitality, commercial, gaming and mixed-use properties. I am also the former President and COO of Ian Schrager Company. Madden has worked with I.S. International, LLC (“IS International”) and Marriott International, Inc. (“Marriott”), the defendants in the above captioned action, in the roll out of the Edition brand of hotels, i.e., the subject of the above

captioned lawsuit. I have personal knowledge of the matters set forth in this declaration and, if called upon as a witness, I could and would competently testify to these matters under penalty of perjury.

2. In connection with this matter, I have reviewed a copy of the Complaint as well as Plaintiffs' Brief in Opposition to I.S. International, LLC's and Ian Schrager's Motion to Remand and Abstain, dated November 3, 2011.

3. IS International is in the business of providing hotel design services consistent with the design and vision of its President and founder Ian Schrager. Ian Schrager is a world renowned hotelier widely considered responsible for creating the "boutique" or "lifestyle" hotel.

4. During the summer of 2007, IS International and Marriott entered into an agreement to develop a new brand of boutique hotels called "Edition." The "Edition" brand of hotels combines the personal, intimate, individualized and unique lodging experience that Ian Schrager is known for, with the global reach, operational expertise and scale of Marriott. Indeed, the "Edition" brand of hotels will be the first truly global branded lifestyle hotel on a large scale.

5. As part of the IS International-Marriott "Edition" agreement, IS International is responsible for the look and feel of each "Edition" branded hotel. Marriott, by contrast, is responsible for the fire and life safety aspects of the hotels as well as the operational components of the hotels. This division of labor allows each party to maximize the use of their respective expertise in the hospitality industry.

6. In 2008, M Waikiki LLC ("Plaintiff"), Marriott, and IS International entered into discussions to transform Plaintiff's hotel property in Honolulu, Hawaii (the "Hotel") into the first "Edition" branded hotel. On or about July 9, 2008, IS International entered into a Design and Technical Services and Pre-Opening Agreement ("TSA") with Plaintiff and Marriott.

7. Each of the parties to the TSA were ultimately responsible for separate and distinct aspects of the project and each party was responsible for bringing their respective expertise to bear on the project. The parties' responsibilities were divided as follows: (i) IS International was responsible for the design and overall theme of the Hotel; (ii) Plaintiff was responsible for all structural matters and the configuration of many of the areas of the Hotel; and (iii) Marriott was solely responsible for operations and the fire and life safety aspects of the Hotel. (TSA § 2.1.1.)

8. This division of labor is present throughout the TSA demonstrating that IS International was the party responsible for the Hotel's design. For instance, Section 2.1.4 of the TSA states that IS International "shall direct all of the design consultants and the artwork consultant throughout the term of this Agreement." In fact, IS International, not Marriott, developed the overall design that was used in the Hotel.

9. Although Plaintiff's Hotel is located in Hawaii and some work was done on-site, IS International's principal place of business is located at 818 Greenwich Street, New York, New York 10014 and the vast majority of the design related services provided by IS International pursuant to the TSA were done in New York. Some additional services were done by the project's architect in Toronto, Canada. The provision of these design related services had nothing to do with Marriott.

10. IS International, through its employees, developed its design concepts for the Hotel at its New York office. All of the employees of IS International, including defendant Ian Schrager, who worked on the Hotel project are located in New York and work out of IS International's New York office. Marriott was not involved with the creation and implementation of the Hotel's design.

11. Moreover, after IS International developed the design concepts for the Hotel, it hired a Toronto-based architect, Yabu Pushelberg, to execute IS International's vision for the design of the Hotel. Yabu Pushelberg has an office in New York City. Yabu Pushelberg traveled to New York for all design meetings, which were held at IS International's New York office. In addition, IS International hired New York-based public relations firm The Brandman Agency to conduct the TSA-required pre-opening promotion and advertising for the Hotel. Furthermore, the company hired Harrison Shriftman, a New York-based event planning firm for the TSA-required opening celebration and related activities.

12. Because the majority of IS International's activities were conducted in New York all of its relevant witnesses and documents are located in New York. For instance, Michael Overington and Paul Haslhofer were the key members of IS International's project team for the Hotel and would likely be called by IS International (and Schrager) to testify as to the design work provided by IS International for the Hotel pursuant to the TSA. In addition, all of IS International's (and Schrager's) potential third party witnesses, i.e. Glen Pushleberg is located in Toronto. These third party witnesses may be required to produce documents or be needed to testify on IS International's behalf.

13. All of IS International's documents pertaining to the services it rendered under the TSA are located in IS International's New York office. Schrager's documents, as an employee of IS International, are also located here in New York.

14. Although Plaintiff filed for bankruptcy in the United States Bankruptcy Court for the District of Hawaii ("Hawaii Bankruptcy Court"), IS International and Schrager have not been involved with any of the proceedings in that Court. Neither IS International nor Schrager has

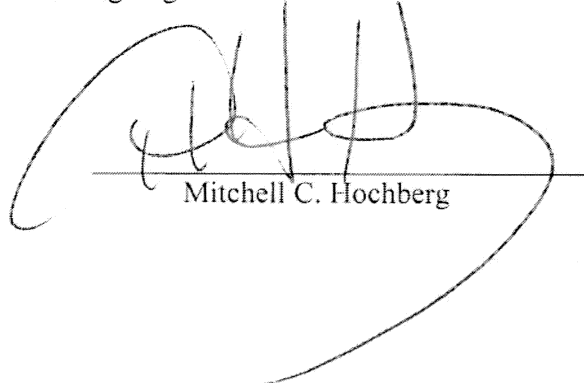
filed a proof of claim in the Plaintiff's bankruptcy case. Presently, neither IS International nor Schrager intend to file a proof of claim in the Plaintiff's bankruptcy case.

15. Plaintiff has not served any legal documents from the bankruptcy proceedings upon IS International or Schrager. Moreover, neither IS International nor Schrager has engaged bankruptcy counsel to enter an appearance on its behalf in Plaintiff's bankruptcy case. Neither IS International nor Schrager has filed any motion or any other legal documents in the Plaintiff's bankruptcy case.

16. The "claims litigation" referred to in Plaintiff's brief in opposition to IS International and Schrager's motion to remand and abstain, solely relates to Marriott's responsibilities under the Management Agreement between Plaintiff and Marriott or Marriott's responsibilities under the TSA that are separate and distinct from IS International's responsibilities under that the TSA. Although it appears that ten depositions have already been conducted in the Plaintiff's bankruptcy case, IS International and Schrager received no prior notice of any of these depositions, and no one attended any of these depositions on either of their behalf.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: New York, New York
November 14, 2011



Mitchell C. Hochberg